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Report of the Secretary-General

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I. INTRODUCTION

1. On 15 December 1994, the General Assembly adopted resolution 49/75 F entitled "1995 Review and Extension Conference of States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons", the operative part of which reads, inter alia, as follows:

> "2. Invites States parties to provide their legal interpretations of article X, paragraph 2, of the Treaty and their views on the different options and actions available, for compilation by the Secretary-General as a background document of the 1995 Review and Extension Conference of States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, well before the holding of that Conference."

2. Pursuant to that request of the General Assembly, the Secretary-General, in a note verbale dated 20 January 1995, invited States parties to provide their views on this matter. The replies received thus far are reproduced in section II of the present report.

II. REPLIES RECEIVED FROM GOVERNMENTS

CANADA

[Original: English]

[20 March 1995]

The Government of Canada supports indefinite extension of the Treaty on the Non-Proliferation of Nuclear Weapons. One of the many advantages of this option is precisely that it is not subject to potentially disruptive legal uncertainty. Canada has therefore not seen the need to explore in depth the legal complexities which might attend an extension for a fixed period or for fixed periods. Indefinite extension is plain, simple and permanent.

COLOMBIA

[Original: Spanish]

[28 February 1995]

1. Article X, paragraph 2, should be interpreted in the context of the Treaty.

The object and purpose of the Treaty

2. The decision on which the modality of extension should be adopted depends on the evaluation by the parties of compliance with the Treaty's provisions and their evaluation of its operation. That review will take place in the light of the object and purpose of the Treaty.

3. Review of compliance with the obligations of the parties and evaluation of the operation of the Treaty in the light of its object and purpose lead us into the field of the interpretation of treaties. In this regard, we believe that article 31 of the 1969 Vienna Convention on the law of treaties states the general rule for the interpretation of treaties.

4. That rule, which is known as the rule of the ordinary meaning or the rule of context, was unanimously agreed upon by the International Law Commission when it elaborated the draft articles which were finally adopted as part of the text of the above-mentioned Vienna Convention.

5. In the matter of interpretation, we find a number of similar rulings by the Permanent Court of International Justice, including the decision in the affair of the Polish postal service in Danzig, and by its successor, the International Court of Justice, in several rulings, of which we may mention its advisory opinion on the interpretation of the peace treaties between Bulgaria, Hungary and Romania (phase II), the case of the rights of nationals of the United States of America in Morocco, and the cases concerning south-west Africa.

6. With regard to the Treaty, it is enough to consider the ordinary meaning of the terms in order to understand its object and purpose, the specific obligations it imposes, its control and safeguard mechanisms, and the modalities for its extension.

7. It would also be useful to mention that the Treaty itself explicitly provides in article VIII, paragraph 3, for the obligation of the parties to review at intervals the operation of the Treaty with a view to assuring that the purposes of the preamble and the provisions of the Treaty are being realized.

Obligations of parties under the Treaty

8. The Treaty on the Non-Proliferation of Nuclear Weapons, as its name indicates, had as its objective the non-proliferation of such weapons and their eventual elimination. The relevant norms setting out that objective are contained mainly in the 13 preambular paragraphs of the Treaty and in article VI.

9. The Treaty sets out in very clear terms certain obligations on the part of nuclear-weapon States Parties. These obligations are set forth mainly in article I, while the obligations on the part of non-nuclear-weapon States parties are set out mainly in article II. All of this is without prejudice to the right of non-nuclear weapon States to develop nuclear technology and material for peaceful purposes, as provided in article IV.

10. The Treaty also establishes a system of controls and safeguards, as set out in article III, and creates, as mentioned before, a mechanism for periodic review in the form of conferences of the parties held for that purpose.

Final comments

11. The preamble, article VI and the other articles of the Treaty on the Non-Proliferation of Nuclear Weapons constitute an unequivocal reflection of the will of the States parties in the matter.

12. On this occasion, the Conference of the parties will have the twin task of reviewing compliance with the obligations assumed under the Treaty and deciding on the modalities of its extension. Moreover, this will be the last occasion for review during this first period of the operation of the Treaty, before a decision is adopted on the modality of its extension. The exercise in which the parties will have to engage will be to verify one by one the obligations assumed by them, which are contained in the preamble and in each and every one of the articles, and to take a decision on the appropriate modality of extension.

13. Finally, it is useful to note that the practice that has been followed in conferences for the review of the Treaty and in adopting decisions in accordance with the rules of procedure, has been to seek consensus, without excluding the possibility, of course, that decisions might be taken by vote. The importance of having any decision on the extension of the Treaty adopted by consensus instead of by a vote is obvious.

COSTA RICA

[Original: Spanish]

[16 February 1995]

1. The Government of Costa Rica considers that article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons should be interpreted in accordance with the ordinary meaning of its terms in the light of its object and purpose. The text literally authorizes the Conference of States Parties to extend this international instrument indefinitely or for an additional fixed period or periods, or not to extend it. Consequently, only a possible unconditional extension, whether for an indefinite period or for an additional fixed period or periods, is expressly authorized by the text of the Treaty.

2. However, the Government of Costa Rica recognizes that, in accordance with article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969, it would be possible in law to have a broader interpretation of this article in good faith. Consequently, the Government of Costa Rica is of the view that the parties should not exclude the possibility that other modalities of extension, such as a conditional extension or an extension for a given number of periods at the end of which a further conference of the parties could decide on another extension, might be legally valid and applicable to the Treaty.

3. Therefore, the Government of Costa Rica considers that any decision to extend the Treaty using any of the established modalities would be in compliance with the Treaty's provisions. The mandate of the Conference of States Parties is limited to the application of article X of the Treaty and does not include amendment of that article. For this reason, the Government of Costa Rica

considers that the decision of the Conference will be fully binding on all parties without need for any subsequent statement of willingness to be so bound.

4. On the other hand, the Government of Costa Rica considers that, in as much as the use or threat of use of nuclear weapons constitute violations of international law and, in particular, of human rights norms having the character of jus cogens, the possible extension of the Treaty and the fact that States continue to be parties to it should not be interpreted as recognition of the legality of the use, threat of use or possession of nuclear weapons, but merely as a preliminary step on the road to the ultimate complete prohibition of such weapons. The position of Costa Rica with regard to these principles is unalterable.

5. Finally, with respect to the possible modalities of extension, the Government of Costa Rica considers it vital to unconditionally and indefinitely extend the Treaty on the Non-Proliferation of Nuclear Weapons.

FRANCE

(on behalf of the European Union)

[Original: French]

[12 March 1995]

1. By a note verbale dated 20 January 1995, the Secretary-General drew attention to General Assembly resolution 49/75 F, which calls for the compilation, by the Secretary-General, of a background document containing the views of Member States of the Organization on the legal interpretation of article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons.

2. During the forty-ninth session of the General Assembly, the European Union voted against the draft resolution in question. That position, which was shared by the Depositary States, was founded on the fact that the legal interpretation of the Treaty was the exclusive responsibility of the parties and that it was, a priori, not up to the Secretariat to compile a document on the matter. The negative vote was further justified by the fact that there was consensus, during the third session of the Preparatory Committee for the 1995 Review and Extension Conference of the NPT, that the request for legal interpretations should be referred to the fourth session, which was held in January 1995.

3. The European Union had, during the third session of the Preparatory Committee, held at Geneva from 12 to 16 September 1994, already distributed a document on the options and modalities for extending the Treaty. This document, which was issued under the symbol NPT/CONF.1995/PC.III/14, is annexed hereto.

4. Notwithstanding its reservations concerning the procedure envisaged in resolution 49/75 F, and in view of the importance of this matter and the concern of the European Union to ensure that its analysis is disseminated as broadly as possible, France, which is currently President of the European Union, requests

that the aforementioned working document be incorporated in the compilation being undertaken by the Secretariat.

ANNEX

EUROPEAN UNION

1. The European Union has produced this paper on the question of options and modalities for extending the Treaty on the Non-Proliferation of Nuclear Weapons in order to facilitate further discussion of these matters among all parties.

EXTENSION OPTIONS

Basic extension options

2. Article X, paragraph 2 of the Treaty means that at the Extension Conference in 1995 the parties can only choose between three basic options:

(a) Indefinite extension;

(b) Extension for an additional fixed period;

(c) Extension for additional fixed periods.

3. The option of extension for additional fixed periods only makes sense if it is accompanied by some decision-making mechanism enabling the parties to decide at the end of each fixed period whether to move on to the next one. Without such a mechanism extension for an unlimited number of additional fixed periods would equate to indefinite extension. Similarly, without such a mechanism extension for a limited number of additional fixed periods would equate to extension for one additional fixed period.

Implications of indefinite extension

4. If the parties choose indefinite extension, no further decision on extension need ever be taken by them. Each of them would, however, still retain the right of individual withdrawal from the Treaty in accordance with article X, paragraph 1. In addition, the fact that the Extension Conference had decided to extend the Treaty indefinitely would not mean that it could never be terminated. This could still be done in accordance with the customary international law which is reflected in article 54 of the Vienna Convention on the Law of Treaties (see para. 9 below).

Implications of extension for an additional fixed period

5. If the parties choose extension for a single fixed period, they can set the fixed period at any length they wish. Whatever length they choose, however, the Treaty will automatically terminate at the end of the chosen period. Article X, paragraph 2, provides separately for the possibility of a series of additional fixed periods. Therefore if the parties opt in 1995 for extension by a single

fixed period they could not still decide on a further extension at a subsequent date by the majority specified in article X, paragraph 2. That article only gives authority for the holding of one extension conference with decisions taken by the majority of States parties, and a Treaty amendment would be required to enable a second one to take place. The terms of article VIII, paragraphs 1 and 2, make any amendment to the Treaty very difficult to achieve. In the absence of such an amendment a decision to extend the Treaty further could only be taken by all the States parties.

Implications of extension for additional fixed periods

6. If the parties choose extension for additional fixed periods, they will need to decide on the length of these periods. Article X, paragraph 2, offers no guidance on their possible length. It must therefore be assumed that they could be of any length, and that they could be of the same or varying length. As noted in paragraph 3 above, the parties would also need to agree on the mechanism by which they would decide at the end of each fixed period whether to proceed to the next one. One possibility, which would be consistent with the need for a decision-making mechanism, yet would avoid the danger of unauthorized Treaty amendment, might be a mechanism that would provide for automatic movement from one extension period to the next unless a specified number of countries objected in some prescribed manner.

7. Since the establishment of a mechanism for moving from one period to the next is not explicitly stated in the Treaty, and since such a mechanism would be exceptional (binding parties even if they vote against) any such mechanism should be confined to the minimum necessary to make sense of the Treaty provision, i.e. a mechanism whereby the parties vote to continue (or not). Anything which goes beyond necessary implication is an amendment to the Treaty requiring the exercise of the article VIII mechanism.

Additional extension conference?

8. The Treaty mentions only one extension conference. The idea that extension for a fixed period could also include a further conference option to consider extending the Treaty further is problematic since this would not then be an extension for "an additional fixed period". It would really be more than one period; or if it is one period, the period is not fixed. But in any event, for the reasons given in paragraph 7, such a conference should not be implied without clear wording. This is because such a conference is exceptional as it has the power to bind all parties by a majority vote. In the absence of clear wording, only one such conference can be held, and to impose another is really a Treaty amendment.

Immediate termination

9. Article 42, paragraph 2, of the Vienna Convention on the Law of Treaties provides that: "termination of a treaty ... may take place only as a result of the application of the provisions of the treaty or of the present Convention". There is no provision in the Treaty on the Non-Proliferation of Nuclear Weapons dealing with termination (as opposed to article X, paragraph 2, which deals with

extension). The terms of article 54 of the VCLT mean that immediate termination could only be achieved if all the parties consented to it.

EXTENSION MODALITIES

Extension decision

10. Article X, paragraph 2, says quite clearly that the decision on extension must be taken "by a majority of parties to the Treaty" (i.e. not just by a majority of those attending the extension conference). There is therefore no legal requirement for a consensus decision on extension. Equally, there is no bar to a consensus decision on extension providing that at least a majority of States parties participate in the consensus.

11. Article X, paragraph 2, says nothing about the precise procedure for taking the extension decision, about how it should be recorded, or about what should be done if there is no majority at the conference for any decision on extension. It will therefore be necessary for the extension conference to have rules of procedure which clearly explain how these matters are to be handled within the context of article X, paragraph 2's stipulation that any decision on extension must be supported by a majority of States Parties.

Rules of procedure

12. The rules of procedure used at Treaty Review Conferences in the past are inadequate for these purposes in a number of ways:

(a) It would be possible under these rules for a decision on extension by consensus or voting to be taken without the support of a majority of Parties;

(b) There is no provision in these rules that would enable one to check that a consensus decision on extension included a majority of parties;

(c) There is no provision in the rules to explain what should be done if the Extension Conference is incapable of reaching a decision on extension in accordance with article X, paragraph 2.

Changes to the rules of procedure used at the Treaty Review Conferences are under discussion at the prepcoms with a view to making them suitable for the Extension Conference in 1995.

Recording the extension decision

13. The Extension Document should:

(a) Be distinct from any review document;

(b) Limit itself to a bald statement of the essential facts about which of the extension options set out in article X, paragraph 2, the parties have chosen;

(c) Record clearly which States participated in the consensus decision or how they voted, if a vote is taken (there will then be no room for doubt that a majority of States parties participated in the consensus decision, or voted for the decision, or about which States they were).

Immediate entry into force of the extension decision

14. Once an extension decision has been made in accordance with article X, paragraph 2, it immediately binds all the parties, even those which did not support it. It could not be legitimately argued that any extension decision must subsequently be approved or ratified by States parties before it comes into force for them. There is no such requirement in article X, paragraph 2, in contrast with the ratification requirements in article VIII, paragraph 2, for amendments to the Treaty.

15. Nor could any State party which did not support the extension decision legitimately seek to exercise its individual right of withdrawal from the Treaty as a result of the decision. It cannot be argued that an extension decision taken in accordance with the Treaty is an "extraordinary event".

Continuation in force of the treaty if no extension decision is reached

16. There can be no argument that the Treaty cannot last longer than 25 years in the absence of a decision, since article X, paragraph 2, provides for the decision to be made at a Conference twenty-five years after the Treaty's entry into force, and for the Conference to decide to continue the Treaty's duration. It is therefore also implicit that the Treaty must continue in force while the Conference is in session.

17. As detailed in paragraphs 2-8 above, article X, paragraph 2, of the Treaty envisages only three extension options. Until the extension conference has taken a decision in favour of one of these options the parties will not have fulfilled their obligations under this part of the Treaty. Accordingly, the Conference must remain in existence until such a decision is taken. If taking a decision by the requisite majority proves difficult, the Conference could be adjourned to reconvene later, but it cannot be concluded.

18. There is an argument that the Treaty will be terminated if the Conference fails to reach a decision on extension. This argument is difficult to sustain, since it would in effect amount to a right of termination which is not provided for in the Treaty. It would be erroneous to try to equate the absence of an extension decision with a unanimous decision to terminate it under article 54 of the Vienna Convention (see para. 9 above). But in any case the argument should be a hypothetical one for the reasons set out in the preceding paragraph.

KAZAKHSTAN

[Original: Russian]

[27 February 1995]

1. Having ratified the Treaty on the Reduction and Limitation of Strategic Offensive Arms and the Lisbon Protocol thereto, having acceded to the Treaty on the Non-Proliferation of Nuclear Weapons, and having signed the Safeguards Agreement with the International Atomic Energy Agency, Kazakhstan has demonstrated its commitment to the cause of ridding the world of nuclear weapons.

2. Kazakhstan is in favour of the unconditional and indefinite extension of the Treaty on the Non-Proliferation of Nuclear Weapons. At the same time, believing in the need to strengthen the non-proliferation regime in every way possible and in order to avoid the possible perpetuation of nuclear weapons, Kazakhstan will, at the forthcoming Conference, advocate the conclusion of a comprehensive nuclear-test-ban treaty as an essential element of the regime provided for under the Non-Proliferation Treaty; advocate complete nuclear disarmament; and support the initiative of a number of States concerning the conclusion of an international agreement to halt the production of fissionable material for nuclear weapons.

3. In our view, any formula which would cast doubt on a future treaty could be detrimental to the interests of the regime for the non-proliferation of nuclear weapons.

LATVIA

[Original: English]

[1 March 1995]

1. The Ministry would like to inform the Secretary-General that Latvia considers the Treaty on the Non-Proliferation of Nuclear Weapons to be one of the basic documents of international security.

2. In relation to paragraph 2 of article X of the Treaty, the Government of Latvia considers that the States parties to the Treaty have three options for the extension of the Treaty at the 1995 Review and Extension Conference: indefinite extension, extension for an additional fixed period and extension for additional fixed periods.

3. According to paragraph 2 of article X, any decision on extension of the Treaty shall be taken by a majority of the parties to the Treaty, thus, no consensus decision is required. Any decision on extension of the Treaty is binding for all States parties to the Treaty, including for those that advocated a different extension option.

4. In regard to indefinite extension of the Treaty, Latvia considers that if a majority of States parties to the Treaty decide on indefinite extension of the Treaty, no further decision on extension has to be taken in the future.

5. Considering that the parties may decide in favour of the second option provided by paragraph 2 of article X - extension for an additional fixed period - Latvia wishes to stress that the Treaty would terminate at the end of that fixed period. Therefore, for the Treaty to re-enter into force, another extension conference would be necessary, as paragraph 2 of article X provides for the holding of only one conference. In such a case, the parties would have to consider amending the Treaty.

6. The option of extension for additional fixed periods requires further decisions by the parties. Namely, the parties would have to decide on the length of those periods and on the mechanism which would regulate the continuity of the Treaty at the end of each fixed period.

NIGERIA

[Original: English]

[21 February 1995]

1. Article X, paragraph 2, can be paraphrased as follows: The initial lifespan of the Treaty is 25 years. However in view of the relevance of the Treaty to the maintenance of world peace and security, there is an underlying intention in the text that the Treaty should not die after the expiration of the initial term of 25 years, but rather that its lifespan should be extended to ensure a continuation of the obligations of the States parties to the Treaty in order to avoid proliferation and misuse of nuclear weapons.

2. Article X, paragraph 2, provides for three options. The parties may give the Treaty an indefinite extension, or extend it by an additional fixed period, and provide that at the expiration of that term, the Treaty shall be further extended for additional fixed periods. The decision will be taken by a majority of States parties.

Legal interpretation

3. The legal effect of this provision is that the parties cannot reconvene at the impending Conference to decide that the Treaty should not continue in force. They are obliged by article X, paragraph 2, to extend the life span of the Treaty. All that the article allows them to do is to determine whether the Treaty should continue in force indefinitely or be extended for a specific period or periods.

4. It follows from this that if, during the 1995 Review and Extension Conference, the parties decide on only a specified term of extension, the Treaty lapses at the expiration of that term, unless it is duly amended under the provisions of article VIII. If such an event occurs, the willing parties would have to renegotiate and agree on another Treaty with similar or other terms.

5. In the alternative, the parties may decide during the 1995 Conference to extend the Treaty for several specified periods with the proviso that parties shall convene at the expiration of each specified period to decide whether the Treaty should be further extended by another specified period. This alternative accommodates the conflicting interests of both nuclear-weapon and non-nuclear-weapon States parties.

6. Throughout the history of the Treaty, the non-nuclear States have striven for a non-discriminatory regime like those later established by the 1972 Convention relating to biological weapons and the 1993 Convention relating to chemical weapons, each of which provides for the total elimination of a certain class of weapons of mass destruction. From the beginning of the negotiations on the non-proliferation treaty, these States have called for the elimination of all nuclear weapons and their delivery vehicles, although realizing that this process would be achieved only on a step-by-step basis over a period of years. Therefore, they agreed to accept the language of the preambular paragraphs and article VI, calling for the cessation of the nuclear arms race at an early date and for nuclear disarmament. In addition, they accepted article X, paragraph 2, which permits these goals to be achieved by instalments linking disarmament measures to fixed periods of extension.

7. The review process that will take place during the 1995 Conference will reveal the extent to which the preamble and main provisions of the Treaty have been implemented. Obligations assumed by parties under the Treaty must not only be fulfilled but must be seen to be fulfilled. In the event of failure to implement any of the provisions, it will be right to say so and to take the necessary steps to correct the faults in order that the Treaty may fulfil the objectives and purposes of its elaboration and adoption.

8. For a successful 1995 Review and Extension Conference, it is essential that the nuclear-weapon and the non-nuclear-weapon States parties take a decision that accommodates both their interests and cooperate with each other in order to strengthen the Treaty.

9. The extension anticipated under article X, paragraph 2, could be done by way of a protocol to the existing Treaty, which will then be signed by all parties. It could also be decided by a resolution adopted by the parties by consensus.

PHILIPPINES

[Original: English]

[27 February 1995]

General interpretation of article X, paragraph 2

1. The Philippines takes paragraph 2 of article X of the Treaty on the Non-Proliferation of Nuclear Weapons to mean that there will be only one conference, held 25 years after entry into force, to decide on the mode of extension. This decision will be made by a simple majority of the States

parties. The parties will choose from among three options, namely, whether the Treaty shall (a) continue in force indefinitely or (b) be extended for one additional fixed period or (c) be extended for a series of additional fixed periods.

Views on the different options and actions available

Indefinite extension

2. To the Philippines, this alternative means that the Treaty regime would continue indefinitely without any date of termination. Since the Treaty does not have any provision on its termination, this option means that it can be terminated only by the consent of all parties after consultation with the other contracting States (Vienna Convention on the Law of Treaties, article 54).

Extension by additional fixed period

3. This is taken to mean a single fixed extension, regardless of length of time, which would result in the automatic termination of the Treaty at the end of the extension period. After this termination, the Treaty can no longer be extended by a majority vote of the parties, for by then there would no longer be a Treaty to which the States could claim to be parties.

Extension by additional fixed periods

4. This choice is understood as renewal of the Treaty regime periodically for X number of times.

5. The X number could be indefinite, for example, extension for five years renewable every five years thereafter, or limited, for example, extension for five years, with two (or three, or four, etc.) more renewals of five years each, after which the Treaty will terminate. The issue of indefinite or limited renewals will have to be settled by the Conference.

6. Another issue that the Conference must resolve is whether the periods of renewal should be of equal or of different lengths.

7. This choice also means that before each renewal to the next fixed period, and before the end of each current period, the States parties will determine whether a majority of them does not want the Treaty to continue. If there is no majority opposing another X-year term, another such term would occur. If a majority opposes, then the Treaty is terminated by majority decision. In other words, this option affords a periodic possibility of termination.

8. This alternative, however, does not mean that the States parties could require new agreements, such as a comprehensive test-ban treaty, to be entered into before future extensions could take effect. For imposing such a condition, which is not required under article X, paragraph 2, would be tantamount to amending the Treaty. Amendments are not allowed under article X, only under article VIII, which requires not just a majority of all parties but also the unanimous vote of all nuclear-weapon States and all the members of the Board of Governors of the International Atomic Energy Agency (IAEA).

QATAR

[Original: Arabic]

[14 March 1995]

1. There is a common Arab viewpoint on the question of the extension of the Treaty and the importance of this topic, because of the great importance of the Treaty, which constitutes a fundamental element in international efforts to put an end to the dangers of the proliferation of nuclear weapons, as a step towards their total elimination, and to halt the arms race, which is a burden on States and obstructs their development and economic programmes.

2. On the basis of the above and in affirmation of good intentions concerning the goal of bringing the Treaty to the level of indefinite extensions, we believe that that issue is closely linked to the following:

(a) The necessity of Israel's accession to the Treaty on the Non-Proliferation of Nuclear Weapons, submission of all its nuclear installations and facilities to inspection by and the safeguards system of the International Atomic Energy Agency and destruction of its nuclear stock;

(b) The importance of conducting a comprehensive review of the Treaty;

(c) The necessity of a commitment on the part of nuclear-weapon States not to use or threaten to use their weapons against any non-nuclear-weapon State;

(d) A commitment by nuclear States not to develop their weapons and to divest themselves thereof in accordance with a schedule determined in implementation of article VI of the Treaty.

SOUTH AFRICA

[Original: English]

[31 January 1995]

1. In order to come to the correct interpretation of article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons and to be able to follow the legal arguments in establishing the true meaning of the said article, it is necessary to consider the principles of treaty interpretation very briefly.

2. Although these principles are not absolute formulae, they are tools in the interpretation of treaties and serve as guidelines in finding the true interpretation of a specific provision. When applying these principles of interpretation, each principle on its own will render little help in the interpretation of a provision, but it is their cumulative effect that will in most cases be indicative of the correct and true meaning of a specific provision in a treaty.

3. Any effort to interpret treaty provisions starts with studying the grammatical construction of the text itself. Words must be construed according to their plain and natural meaning. The Vienna Convention on the Law of Treaties of 1969 stipulates in article 31, paragraph 1, that a treaty shall be interpreted in good faith in accordance with the ordinary meaning of the terms. This must be done in context and in the light of the object and purpose of that treaty. Where particular words and phrases are unclear, the interpreter should be guided by the general object and context of the treaty. (Although South Africa is not a party to the Vienna Convention on the Law of Treaties of 1969, the provisions of that Treaty are regarded as customary international law and therefore applicable to all States regardless of their participation in the Convention.)

4. However, if the grammatical interpretation would result in an absurdity or inconsistency with the rest of the treaty, the grammatical meaning of the text could not reflect the true intention of the parties. Due regard should be paid to the intention of the parties at the time of the conclusion of the treaty and particularly the meaning attached by them to the words and phrases at that time.

5. The principles of reasonableness, consistency and effectiveness are other useful tools in interpreting treaty provisions. These entail that, when interpreting a provision, the reasonable meaning of words and phrases which is also consistent with the rest of the treaty is to be preferred. In accordance with the principle of effectiveness, the provision should be interpreted in such a way as to render the treaty most effective and useful. Ambiguous provisions should be given an interpretation that is reasonable, effective and consistent with the rest of the treaty.

6. Recourse may also be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion in order to confirm the meaning of a provision in those cases where the principles of ordinary meaning and of object and purpose leave the meaning of the provision ambiguous, absurd or unreasonable (Vienna Convention on the Law of Treaties, article 32).

7. It is within this framework of set principles that we shall endeavour to find the correct interpretation of article X, paragraph 2, of the Treaty on the Non-Proliferation of Nuclear Weapons.

8. Article X, paragraph 2, leaves three choices open with regard to the extension of the Treaty. The Conference can choose between the following options:

(a) Indefinite extension;

(b) Extension for an additional fixed period;

(c) Extension for additional fixed periods.

9. Applying the rules of interpretation no difficulty exists in understanding what is meant by the term "indefinitely". If such a decision is taken, the Treaty will have an unlimited duration, with the usual option for withdrawal by

a party as provided for in the Treaty, or be terminated by consent of all the parties after consultation with each other as stipulated in articles 42 and 54 of the Vienna Convention on the Law of Treaties.

10. The second option, namely "additional fixed period", means that, as was done when negotiating the Treaty, it is possible for the parties to decide to extend it for a single fixed period only. The time limit of such a fixed period is not indicated and the parties are therefore free to choose any length of time. It is our view that the purpose of the Treaty and the practical modalities thereof, such as the IAEA safeguards required by it, should direct the parties in deciding on the length of such a fixed period. When choosing this option, the parties must realize that after the expiry of the fixed period the Treaty will automatically terminate as there is no provision in it for a second conference to decide on extending the duration of the Treaty.

11. The argument also exists that article X, paragraph 2, can be interpreted in such a way that, after the expiry of the fixed period, article X, paragraph 2, can revitalize itself by being applied once again by the parties to decide on the further extension of the Treaty in a similar way as was done after the first 25 years. Applying the principle of interpretation that the ordinary meaning must be given to treaty provisions, it is quite difficult to see how article X, paragraph 2, can be interpreted to authorize the holding of a second extension conference where the parties can once again decide between the three options. This is in our view too broad an interpretation of article X, paragraph 2, but as indicated below compromises will have to be reached and the political will of the parties will in the end determine the choice of the extension option.

12. The third option leaves parties the choice to decide on extending the Treaty for "additional fixed periods", also without specifying the length or number of the fixed periods. The true meaning of this option of extension for additional fixed periods is not clear as the grammatical interpretation thereof leads to ambiguity. The first observation when interpreting this part of the provision is the fact that the grammatical interpretation of this option leaves little practical difference between the different options. For example: four consecutive fixed periods of five years (option three) and a single fixed period of say 20 years (option two) are similar, while an unlimited number of additional fixed periods (option three) will have the same effect as an indefinite extension (option one).

13. This could not have been the intention of the parties when drafting this article. Terms of a treaty must be interpreted within their context and since the options "indefinite", "period" and "periods" appear in the same context, it warrants the conclusion that the parties must have meant these options to be truly three different extension options.

14. These options can be different only if article X, paragraph 2, is interpreted in such a way that the outcome and effect of the extension options differ. In case of an indefinite extension the Treaty will not terminate unless all the parties have withdrawn from it under the terms of the Treaty or until it is terminated in accordance with the provisions of the Vienna Convention on the Law of Treaties. In the case of an extension for a fixed period the Treaty will terminate at the expiry of that period.

15. This leaves the termination position of the Treaty under the option of the fixed periods unsolved. It is clear that in choosing the option of fixed periods, the parties must have intended the possibility of extending the Treaty for at least two fixed periods to distinguish it from the second option of a single fixed period. Logically this means that some kind of mechanism must exist in order for one fixed period to be followed by the next. Although the Treaty does not explicitly provide for such a mechanism, the need for effectiveness necessitates such an interpretation. To avoid the dangers of unauthorized treaty amendment through interpretation, such a mechanism must be effective and consistent with the rest of the Treaty. It is also important that the envisaged mechanism does not infringe unduly on the sovereignty of the parties and should therefore be limited to the minimum necessary to give a meaningful interpretation to this provision.

16. In search for the true interpretation of the term "fixed periods", guidance could be found in the supplementary means, including the preparatory work of the Treaty. The circumstances of the conclusion of the Treaty are useful to confirm the meaning resulting from the application of the other interpretation rules. From the travaux préparatoires it is clear that the present wording of article X, paragraph 2, was a compromise and stemmed from an Italian proposal that called for a fixed term for the Treaty and the automatic extension for terms equal to its initial duration for those Governments that did not indicate their withdrawal from the Treaty. This proposal was amended by deleting the idea of automatic extension and including the convening of a conference of the parties to decide at the end of the first term whether to prolong the duration of the Treaty.

17. As article X, paragraph 2, provides only for a single extension conference to be held after the expiry of the initial 25-year period, no further extension conferences can be held in terms of the Treaty. The only deduction that can therefore be made is that, if the parties should decide on the fixed periods option, it should be possible for those periods to follow each other. However, to differentiate this option from the indefinite extension option explained above, a decision-making mechanism is needed to trigger the succession of the fixed periods.

18. The parties accepted the idea of the periodic review of the operation of the whole Treaty and created the mechanism of review conferences for this purpose (art. VIII, para. 3). The fact that no explicit provision was made to this effect in respect of the fixed periods option does not preclude one from interpreting the Treaty in such a way that the mechanism needed for the effective implementation of the fixed periods option can also be covered under the review conferences. At the time of a review conference held near the end of a fixed period, the parties should be able to decide on the future of the Treaty. This interpretation is in fact consistent with the idea of periodic review of the Treaty. Such a decision-making mechanism is also consistent with the idea contained in article X, paragraph 2, that the parties should be able to decide by majority vote on the continuation of the Treaty. The principle of effectiveness also dictates that this interpretation is the only reasonable one.

19. The question now remains as to the nature of the decision-making mechanism. It is our view that it will be possible to have either a "negative" mechanism or

a "positive" mechanism. The choice between these two mechanisms will greatly depend on the political realities and the need for compromise between the different interest groups within the Treaty, rather than what is regarded as being strictly correct from a legal point of view.

20. The "negative" mechanism entails that it would be possible for each fixed period to follow the previous one automatically, unless the parties decide at the time of the review conference held near the end of any of the fixed periods not to continue with the Treaty. This means that the duration of the Treaty will be extended automatically unless the parties decide against the automatic roll-over from one period to the next. It also does not mean that a decision of the parties is needed at the end of each fixed period. The Treaty will automatically continue through the various fixed terms until the parties decide not to extend it any further.

21. A "positive" mechanism on the other hand is one where the parties will have a say in the continuation of the Treaty at the end of each of the fixed periods. The Treaty will continue to the next fixed period only if the majority of the parties so decide. If at the review conference near the end of each fixed period the majority of the parties vote affirmatively in this regard, the duration of the Treaty will automatically be extended to the next fixed period. The "positive" mechanism is in our view also consistent with the idea of constant review of the Treaty and with the idea contained in article X, paragraph 2, that the parties can "... decide whether the Treaty shall continue in force ...", in other words, a positive decision. A decision-making process similar to the one now suggested is therefore already part of the Treaty. If all the parties accept and agree on this interpretation, this interpretation will also be acceptable under the Vienna Convention on the Law of Treaties as a case of change through subsequent practice in the application of the treaty (art. 31, para. 3 (b)).

22. It is therefore our submission that the parties intended to create three truly different extension options in terms of article X, paragraph 2. Each of these options as explained above has different legal implications and results which should be carefully considered by the political decision makers when deciding which option to choose. However, it is also true that the Treaty was a product of political bargaining and compromise. There is little doubt that the decision to be taken in 1995 on the duration of the Treaty will likewise be brought about by the political will of the parties to reach a compromise that will best serve their common goal - the prevention of the spread of nuclear weapons.

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SURINAME

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1. Article X, paragraph 2, obliges States parties to the Treaty on the Non-Proliferation of Nuclear Weapons, to decide, during the forthcoming 1995 Review Conference, on the extension of that Treaty, which can be for an indefinite period of time or can be determined in advance for one or more extended periods.

2. In case the States parties to the Treaty fail to formulate a decision with regard to the extension of the Treaty within the specified time, this need not render the Treaty inoperative. The Government of the Republic of Suriname is of the view that paragraph 2 of article X does not deny the States parties to the Treaty the possibility of adjourning the Conference and reconvening at a later time. States parties to the Treaty will then have to take a formal decision with regard to the adjournment of the Conference as well as its duration.

3. If States parties to the Treaty opt for an extension of only one period then the validity of the Treaty will expire when that period has elapsed.

4. The extension of the validity of the Treaty before it expires will be possible only with the consent of all the States parties to the Treaty and through the necessary amendments to the Treaty.